

THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE SEPTEMBER 20, 2004 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

ENVIRONMENTAL PROTECTION

ENVIRONMENTAL REGULATION

Standards for Individual Subsurface Sewage Disposal Systems

Proposed Readoption: N.J.A.C. 7:9A

Authorized by: Bradley M. Campbell, Commissioner, Department of Environmental Protection

Authority: N.J.S.A. 13:1D-1 et seq.; 26:3A2-21 et seq., 58:10A-1 et seq.; including 58:10A-16; 58:11-23 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement

DEP Docket Number: 19-04-08/226

Proposal Number: PRN ____ - ____

Submit written comments on this readoption by November 19, 2004 to:

Gary J. Brower, Esq.
Attn.: DEP Docket No. 19-04-08/226
Office of Legal Affairs
Department of Environmental Protection
PO Box 402
Trenton, New Jersey 08625-0402

The Department of Environmental Protection (Department) requests that commenters submit comments on disk or CD as well as on paper. Submission of a disk or CD is not a requirement. The Department prefers Microsoft Word 6.0 or above. MacIntosh formats should not be used. Each comment should be identified by the applicable N.J.A.C. citation, with the commenter's name and affiliation following the comment.

A copy of the proposal is available on paper or on disk by calling the Department at (609) 633-7021. The rule proposal can also be found at the Department's website (www.nj.gov/dep).

THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE SEPTEMBER 20, 2004 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

The agency proposal follows:

Summary

This notice of proposal is excepted from the rulemaking calendar requirement by having a 60-day comment period, pursuant to N.J.A.C. 1:30-3.3(a)5.

Pursuant to Executive Order No. 66(1978), the Standards for Individual Subsurface Sewage Disposal Systems (Standards), N.J.A.C. 7:9A, were scheduled to expire on August 18, 2004. The Standards govern the design, location, construction, installation, alteration, operation and repair of individual subsurface sewage disposal systems. These rules are promulgated pursuant to the Realty Improvement Sewerage and Facilities Act (RISF), N.J.S.A. 58:11-23, the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., as well as the Act of Organization of the Department of Environmental Protection, N.J.S.A. 13:1D-1 et seq.. The Department has reviewed the rules and determined that they continue to be necessary, reasonable, and proper for their intended purposes. Accordingly, the Department is proposing to readopt N.J.A.C. 7:9A as described below. This proposal of readoption extends the expiration of this Chapter pursuant to N.J.S.A. 52:14B-5.1c.

Standards for the construction of septic systems were promulgated in 1954 under the RISF Act. The rules were modified a number of times without substantial changes. On January 1, 1990 the rules were substantially changed and updated based on modern wastewater treatment science and best engineering practices, with minor amendments and modifications promulgated in 1994 and 1999. The rules' purpose is to protect public health as required by the RISF Act and to prevent water pollution as required by the Water Pollution Control Act.

THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE SEPTEMBER 20, 2004 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

The Department receives advice from a statutory advisory committee that convenes on a biennial basis in accordance with the RISF Act. The RISF Act specifies the core membership of this committee (see N.J.S.A. 58:11-35). In addition to the core membership, the Department invites other organizations and individuals to participate in the advisory process and has established this expanded group as the “Onsite Wastewater Management Advisory Committee” (Committee). Only those individuals representing the RISF designated agencies have a formal vote (identified by an * below). This committee met first on October 6, 1998, and then approximately once each month thereafter until June 2001 and most recently during July 2003.

The committee consisted of the following representatives:

- * New Jersey Association of Real Estate Boards / Mary Ann Deacon
- * New Jersey Health Officers Association / Ralph D’Aries, M.A., H.O.
- * New Jersey Society of Professional Engineers / Thomas Malavasi, P.E.
- * New Jersey State League of Municipalities / Hon. J. Knox Felter, Jr., R.E.H.S.
- * New Jersey Home Builder’s Assn. / Nancy Wittenberg, Anthony DiLodovico
- * New Jersey Institute of Municipal Attorneys / Glenn Kienz, Thomas Hall
- N.J. Reg. Env. Health Specialists Assn. / Edward Wengrowski, R E H.S.
- N.J. Reg. Env. Health Specialists Assn. / Robert Vaccarella, R.E.H.S.
- New Jersey Pinelands Commission / John Stokes, Executive Director
- New Jersey Septage Management Association / David Dam
- Gregg Barkley, P.E., Engineer, Private Citizen

The Department and the Committee will continue to meet and evaluate the rules for potential future amendments.

Description of the Subchapters

Subchapter 1, General Provisions, contains rules regarding the purpose of the Standards, construction and severability, general prohibitions, penalties, and limitations as to the applicability of the Standards.

Subchapter 2 contains the definitions of various terms used in the Standards.

Subchapter 3, Administration, contains rules that govern how the Standards are to be implemented by the administrative authorities that approve the design, construction and installation of individual subsurface sewage disposal systems under the Standards. Subchapter 3 includes rules regarding: ordinances; new system design approvals; alteration or expansion of existing systems; correction of malfunctioning systems; permits to construct or alter systems; soil testing; modification of system plans; the necessity for obtaining Pinelands Commission approval, treatment works approval (TWA), and New Jersey Pollutant Discharge Elimination System (NJPDES) approvals or permits; certificates of compliance; requirements for notification to property owners of proper operation and maintenance practices; records maintenance; registration of personnel; additional requirements for sewerage facilities serving 10 or more realty improvements; inspections; and administrative hearings.

Subchapter 4, Site Evaluation and System Location, sets forth the requirements regarding appropriate site characteristics and where to locate individual subsurface sewage disposal systems on a site. This subchapter includes specific restrictions for sites potentially subject to flooding and those which include freshwater wetlands.

Subchapter 5, Determination of Soil Suitability, sets forth detailed requirements for ascertaining whether the soil on a site is suitable for treatment and disposal of effluent from an individual subsurface sewage disposal system.

THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE SEPTEMBER 20, 2004 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Subchapter 6, Permeability Testing, sets forth detailed requirements for determining the design permeability of the disposal field for an individual subsurface sewage disposal system.

Subchapter 7, General Design and Construction Requirements, contains the standards governing the design and construction of individual subsurface sewage disposal systems.

Subchapter 8, Pretreatment Units, contains standards for grease traps and septic tanks.

Subchapter 9, Effluent Distribution Networks, contains requirements for the components of individual subsurface sewage disposal systems that distribute the effluent into the disposal field.

Subchapter 10, Disposal Fields, governs the design and installation of the disposal fields for individual subsurface sewage disposal systems.

Subchapter 11, Seepage Pits, governs the siting and construction of seepage pits, including soil, design and construction requirements.

Subchapter 12, Operation and Maintenance, contains rules on the operation of individual subsurface sewage disposal systems, including requirements for testing and abandoning a system in place.

Appendix A, Figures, contains the graphics and tables which correspond to associated text in subchapters 1 through 12.

Appendix B, Standard Forms for Submission of Soils/Engineering Data, contains the standard forms which are to be used for permit applications and certifications for individual subsurface sewage disposal systems.

Appendix C, Uniform Placement of Percolation Tests, contains graphics depicting the required number and location of percolation tests based upon size and geometry of the disposal fields.

THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE SEPTEMBER 20, 2004 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Appendix D, Soil Suitability Classification of New Jersey Soils, is a user's guide which provides a broad overview of the general suitability of New Jersey soils by type, for onsite disposal of sanitary wastewater by means of individual subsurface sewage disposal systems.

Social Impact

The proposed readoption is expected to continue the social benefits derived from the current standards. The Standards facilitate the protection of the public health, safety, and the environment through proper siting, design and construction practices for new and recently constructed, altered or repaired individual subsurface sewage disposal systems. The major social impact of the standards will continue to be the benefits derived from the reduced risk of septic system malfunctions.

Economic Impact

The Department is proposing readoption of the standards without change. Compliance with the requirements of these rules may require a person seeking to dispose of wastewater using an individual subsurface sewage disposal system to incur costs for such things as consultant costs related to site evaluation, system design and system construction. The exact costs will depend upon conditions at the particular site and the amount of wastewater to be discharged. The major administrative and technical requirements of the standards that are most closely related to the cost of individual subsurface sewage disposal systems, such as the cost associated with site evaluation, the engineering costs associated with the actual design of the system and the costs associated with the construction of the system, will remain the same as under the existing rules. Maintaining the Statewide minimum standard for design and construction of onsite wastewater

THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE SEPTEMBER 20, 2004 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

treatment systems also results in a positive economic impact.. Without statewide regulations governing the minimum standards, each individual municipality would have its own standards for system design and construction. By providing a State standard, the system of approval becomes more predictable for individuals designing, constructing and operating these systems.

Environmental Impact

The readoption of the standards will have a positive environmental impact throughout the State by continuing to mandate the minimum standards for construction and operation of septic systems. The Standards will continue to mandate the minimum standards for suitable soil and fill material within the zone of treatment and provide for an adequate zone for effluent disposal through proper disposal field sizing. Site evaluation and design and construction standards focused on sites with marginal suitability will accommodate current land use and development patterns in a manner that will minimize potentially adverse environmental impacts associated with malfunctioning systems.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c.65) require state agencies which adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis.

The Department's authority for regulating the construction of individual subsurface sewage disposal systems comes solely from State statute, specifically N.J.S.A. 58:11-23 et seq., 58:10A-1 et seq., including 58:10A-16, N.J.S.A. 13:1D-1 et seq., and N.J.S.A. 26:3A2-21 et seq.

THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE SEPTEMBER 20, 2004 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

The rules at N.J.A.C. 7:9A are not promulgated under the authority of, or in order to implement, comply with, or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal laws, Federal standards, or Federal requirements.

Therefore, the Department has determined that no further analysis is required under Executive Order No. 27 and N.J.S.A. 52:14B-1 et seq.

Jobs Impact

The Department does not anticipate that the proposed readoption without change will have a major impact on jobs. Requiring standards for construction of individual subsurface sewage disposal systems may result in employment opportunities for consultants and contractors in this industry. However, without statewide regulations governing the minimum standards, each individual municipality would have its own standards for system design and construction. By providing a Statewide standard, the system of approval becomes more predictable for employers and aids in stabilizing jobs in this sector.

Agriculture Industry Impact

Pursuant to N.J.S.A. 52:14B-4, the Department has evaluated this rulemaking to determine the nature and extent of the impact of the proposed readoption of the Standards on the agriculture industry. This rule readoption will not affect the agriculture industry since no agricultural practices are governed by the RISF. Although persons working in the agricultural industry who reside in or work in dwellings or buildings served by individual subsurface sewage disposal systems must comply with the standards, the rules do not affect the agriculture industry itself.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act (Act), N.J.S.A. 52:14B-16 et seq., the Department has reviewed the proposed readoption for reporting, recordkeeping, or other compliance requirements on small businesses. Any person who proposes to construct an individual subsurface sewage disposal system subject to these standards must strictly comply with the requirements of this chapter. The rules do not require small businesses, as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., to do any reporting or recordkeeping or to meet any other compliance requirements beyond the initial system design and construction. The costs for small businesses are the same costs that any other person or entity seeking to construct an individual subsurface sewage disposal system is subject to, including engineering and/or environmental consultant fees, as well as the application fees. The actual costs vary depending upon the size of the individual subsurface sewage disposal system and the particular site conditions.

These rules do not provide any lesser requirements or exemptions for small businesses because the overall purpose of the rules is to protect the public health, safety, and the environment from improper construction of individual subsurface sewage disposal systems. Lessening the requirements could result in an increased threat to public health, safety, and the environment. In developing the standards, the Department balanced the need to protect the public health, safety, and the environment against the economic impact of the standards. The Department determined that to reduce the requirements for small businesses would endanger public health, safety, and the environment.

THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE SEPTEMBER 20, 2004 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Smart Growth Impact

Executive Order No.4 (2002) requires State agencies which adopt, amend or repeal any rule adopted pursuant to N.J.S.A. 52:14B-4(a) of the Administrative Procedure Act to describe the impact of the proposed rule on the achievement of smart growth and implementation of the New Jersey State Development and Redevelopment Plan (State Plan).

The readoption of these rules promotes State Plan General Policy 4, Prevention of Water Pollution, and General Policy 5, Water Quality/Individual and Community On-site Wastewater Treatment Systems. Without the regulatory framework which establishes the minimum standards to construct individual onsite wastewater treatment systems, there would be no method to ensure these systems are constructed to any minimum criteria that is protective of human health and the environment. The State Plan policy identifies the protection and enhancement of water resources through coordinated planning efforts aimed at reducing sources of pollution and other adverse effects of development, encouraging designs in hazard-free areas that will protect the natural function of stream and wetland systems, and optimizing sustainable resource use. Specifically included in that policy is the providing for well-designed individual on-site wastewater treatment systems that provide treated effluent suitable for recharging ground water. These regulations establish those minimum standards to achieve this State Plan policy.

The rules further advance the Governor's Smart Growth policies by providing clear technical standards and guidance to the regulated public. This promotes more predictable, certain and expeditious review and approval processes. Further, by providing the minimum standards to construct individual systems, the Department is reinforcing the principles of Smart Growth to allow areas that are designated for development which will rely on individual systems for sewage disposal, to be developed on an environmentally protective basis. In addition, the

THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE SEPTEMBER 20, 2004 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

rules provide a consistent method for designing systems that require local approvals, which provides a more predictable method for making development decisions rather than each individual municipality establishing their own minimum standards for designing systems.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:9A.

Based on consultation with staff, I hereby certify that the above statements, including the Federal Standards statement addressing the requirements of Executive Order 27(1994), permits the public to understand accurately and plainly the purposes and expected consequences of this proposed readoption. I hereby authorize this proposed readoption.

Date

Bradley M. Campbell, Commissioner
Department of Environmental Protection